

ORDINANCE # 09-28-532

AN ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND TO PROVIDE THAT THE SCHOOL ADEQUACY PROVISIONS OF THE COUNTY'S ADEQUATE PUBLIC FACILITIES ORDINANCE SHALL APPLY TO ALL LANDS ANNEXED INTO MUNICIPALITIES WITHIN THE TERRITORIAL LIMITS OF THE COUNTY AFTER JUNE 23, 2009

§1. Definitions. - In this Ordinance, the following terms shall have the meanings indicated:

"APFO" shall mean the Adequate Public Facilities Ordinance of Frederick County, Maryland, codified as Chapter 1-20 of the Code.

"Art. 23A" shall mean Article 23A of the Annotated Code of Maryland.

"BOCC" shall mean the Board of County Commissioners for Frederick County, Maryland.

"Code" shall mean the Frederick County Code, 2004.

"Department" shall mean the County's Planning & Zoning Department.

"Planning Commission" shall mean the Frederick County Planning Commission created by §1-13-16 of the Code.

"Vested rights" shall have its judicially determined meaning.

§2. Background. - The BOCC desires that the provisions of the APFO pertaining to school adequacy shall apply to all lands annexed into municipalities within the territorial limits of the County after June 23, 2009.

§3. Notice & Hearing Requirements.

(a) On June 23, 2009 the BOCC initiated this Ordinance by adopting Resolution # 09-21.

(b) Pursuant to APFO §1-20-23(B), the County Manager filed this Ordinance with the Department.

(c) Pursuant to APFO §1-20-23(B), the Department referred this Ordinance to a municipalities within the county having adequate public facilities ordinances for review and comment. The Department referred the comments received from the municipalities to the Planning Commission and BOCC for their consideration.

(d) The Department caused a notice of the Planning Commission public hearing, along with a summary of this Ordinance, to be published in a newspaper of general circulation in Frederick County in accordance with the provisions of APFO §1-20-23(C). The Planning Commission held its duly advertised public hearing on this Ordinance on September 16, 2009, at which time the public had a reasonable opportunity to comment on the proposed revisions and amendments.

(e) The Department caused a notice of the BOCC public hearing, along with a fair summary of this Ordinance, to be published in a newspaper of general circulation in Frederick County in accordance with the provisions of §1-20-23(C) and Art. 23A, §2B(b)(3)(ii).

(f) The Department also caused a notice of the BOCC public hearing, along with a fair summary of this Ordinance, to be mailed, by certified mail, to each municipality in Frederick County in accordance with the provisions of Art. 23A, §2B(b)(3)(ii).

(g) The BOCC held its public hearing on November 10, 2009, at which time the public and the municipalities had a reasonable opportunity to comment on this Ordinance. The BOCC also considered testimony under oath and other evidence presented at the public hearing.

§4. Legislative Findings.

(a) The BOCC finds that the amendments to the APFO set forth in this Ordinance will be in the best interest of the citizens of the county and consistent with the general intent of the APFO.

(b) The BOCC also finds that there will be significant adverse impact on the public health, safety, or welfare affecting residents of the County in unincorporated areas if the school adequacy provisions of the APFO do not apply in lands in all municipalities located in the County that were annexed after June 23, 2009.

NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND THAT:

§5. Amendment & Revision of APFO §1-20-3. – APFO §1-20-3 is amended & revised to read as follows:

“§ 1-20-3. JURISDICTION.

(A) The provisions of this chapter shall apply to all unincorporated lands within the territorial limits of the county.

(B) EXCEPT AS PROVIDED IN §1-20-62(B), THE PROVISIONS OF THIS CHAPTER PERTAINING TO SCHOOLS SHALL ALSO APPLY TO ALL LANDS ANNEXED INTO MUNICIPALITIES WITHIN THE TERRITORIAL LIMITS OF THE COUNTY AFTER JUNE 23, 2009.”¹

§6. Enactment of New APFO §1-20-62. – A new APFO §1-20-62 is enacted to read as follows:

¹ CAPITALIZED AND UNDERLINED TEXT represents matter added to the existing Ordinance.

"1-20-62. APPLICATION WITHIN MUNICIPALITIES.

(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE SCHOOL ADEQUACY PROVISIONS OF THIS CHAPTER SHALL APPLY TO ALL LANDS ANNEXED INTO MUNICIPAL CORPORATIONS WITHIN THE TERRITORIAL LIMITS OF THE COUNTY AFTER JUNE 23, 2009.

(B) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION, THE SCHOOL ADEQUACY PROVISIONS OF THIS CHAPTER SHALL BE OR BECOME INAPPLICABLE IN ANY MUNICIPAL CORPORATION WHICH HAS ENACTED OR ENACTS AN ADEQUATE PUBLIC FACILITIES ORDINANCE WHICH:

(1) COVERS THE SAME SUBJECT MATTER AND FURTHERS THE SAME POLICIES AS THE SCHOOL ADEQUACY PROVISIONS OF THE COUNTY'S ADEQUATE PUBLIC FACILITIES ORDINANCE;

(2) IS AT LEAST AS RESTRICTIVE AS THE SCHOOL ADEQUACY PROVISIONS OF THE COUNTY'S ADEQUATE PUBLIC FACILITIES ORDINANCE; AND

(3) INCLUDES PROVISIONS FOR ENFORCEMENT."²

§7. Ordinance Contingent on Compliance with Requirements of Art. 23A, §2B(b). – If the supermajority requirement set forth in Art. 23A, §2B(b)(3)(iii) is not met, or if the legislative findings set forth in §4(b) of this Ordinance are reversed on judicial review pursuant to Art. 23A, §2B(b)(4), then this Ordinance shall be null, void and of no force and effect.

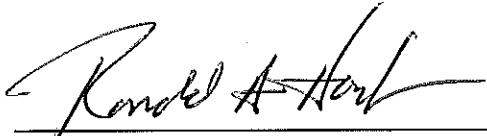
² CAPITALIZED AND UNDERLINED TEXT represents matter added to the existing Ordinance.

§8. Effective Date. - This Ordinance shall be effective on the 16th day of November, 2009

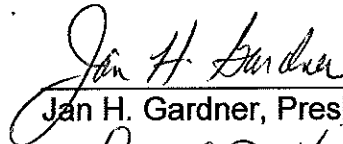
The undersigned hereby certify that the Board of County Commissioners for Frederick County, Maryland approved and adopted the foregoing Ordinance on the 16th day of November, 2009 by the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of the authorized membership of the BOCC.

ATTEST:

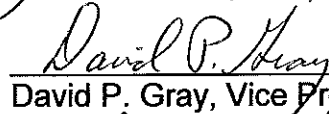
BOARD OF COUNTY
COMMISSIONERS
FOR FREDERICK COUNTY,
MARYLAND



Ronald A. Hart,
County Manager



Jan H. Gardner, President

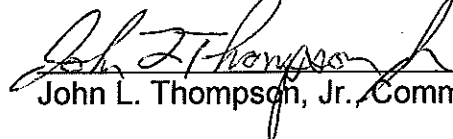


David P. Gray, Vice President



Kai J. Hagen, Commissioner

Charles A. Jenkins, Commissioner



John L. Thompson, Jr., Commissioner

KAM
11/16/09